

# **COUNCIL FOR HEARING INSTRUMENT SPECIALISTS**

## **MINUTES**

**Date: August 4, 2005**

**Time: 9:00a.m.**

**Location: Tennessee Room, Ground Floor  
Cordell Hull Building  
425 5<sup>th</sup> Ave. North  
Nashville, TN 37247-1010**

### **Members Present**

**Dr. David Levy, Chairman  
Mr. Thomas A. Stewart, Secretary  
Dr. Robert E. Bowers, Council Member  
Mr. Jackie L. Miller, Council Member  
Mr. James D. Alderman, Citizen Member**

### **Staff Present**

**Ms. Bonnie Ferrell, Administrator  
Ms. Marva Swann, Unit Director  
Ms. Robbie Bell, Ex Officio  
Ms. Nicole Armstrong, Advisory Attorney  
Mr. Jerry Kosten, Rules Coordinator  
Ms. Denise Moran, Investigative Director**

**The Council Chair, Dr. David Levy determined that a sufficient number of Council members were in attendance to constitute a quorum and called the meeting to order at 9:15 am.**

### **Conflict of Interest**

**Ms. Nicole Armstrong reviewed the Conflict of Interest Policy with the Council members.**

### **O.G.C. Report**

Ms. Armstrong reviewed the O.G.C. Report with the Council. She informed the Council of the following:

- A. Tenn. Comp. R & Reg. 1370-2-.12, 12, .15 regarding continuing education is under review by the Attorney General.
- B. Tenn. Comp. R. & Regs. 1370-2-.04 regarding preliminary qualifications for licensure, procedures for licensure, and examination were under review by the Board of Communications Disorders and Sciences. Modification and personal appearances before the Council.
- C. Conduct roll call vote regarding Tenn. Comp. R. Regs. 1370-1-.05, criminal background checks for initial applicants for licensure.

### **Litigation:**

The Office of General Counsel, Tennessee Department of Health, currently has eight (8) open cases pertaining to the Council for Licensing Hearing Instrument Specialists.

### **Rules**

Mr. Jerry Kosten reviewed the Rule amendments regarding " Mandatory Criminal Background Checks " on all new applicants. After much discussion Mr. Jackie Miller made a motion to accept the amendments as written, Dr. Bowers seconded the motion and Ms. Bonnie Ferrell conducted a roll call vote which passed unanimously.

Mr. Kosten reviewed the following rule amendments:

1. Require applicants to bring the following equipment to the practical skills examination:
  - (i) An audiometer, audiogram forms, and proof of the audiometer's current calibration; and
  - (ii) An otoscope; and
  - (iii) All materials needed to make an ear impression; and
  - (iv) Red and blue ink pens; and
  - (v) An individual to be the subject for the ear impression and hearing test.

**Council for Licensing Hearing Instrument Specialists**

**August 4, 2005**

**Page 2**

1. **Mr. Thomas Stewart made a motion to accept amendments if Mr. Kosten would add (vi) The applicant would bring whatever equipment they use to modify hearing instruments and ear molds". The motion was seconded by Mr. Jackie Miller and the motion carried.**

2. **Require reactivating licensees whose license has been retired for two (2) or more years to complete twenty (20) hours of continuing education.**

**Mr. James Alderman made a motion to accept. Dr. Robert Bowers seconded the motion and the motion carried.**

3. **Mr. Kosten explained the rule to adopt the Division's screening panel rule. Dr. Bowers made the motion to accept, Mr. Miller seconded the motion. Dr. David Levy opposed, Mr. Alderman opposed, Mr. Stewart abstained. The motion failed. After much discussion Dr. Bowers made a motion to accept, Mr. Stewart seconded the motion and Ms. Ferrell conducted a roll call vote with all Council members voting yes. The motion passed.**

4. **Advertising Records and Responsibility. Mr. Stewart made the motion to accept if Mr. Kosten would change that the licensee retain a copy of every advertisement for a period of two (2) years to one (1) year. Dr. Bowers seconded the motion and the motion carried.**

### **Minutes**

**Mr. Stewart requested that the language be changed in the March 31, 2005 minutes regarding a statement made by Dr. Levy. Mr. Stewart stated he knew that in Dr. Levy's heart he meant to say the Board of Communications Disorders and Sciences misled the Council in place of lied to the Council. Ms. Ferrell and Ms. Armstrong informed Mr. Stewart that Dr. Levy did not say misled, he said lied. Ms. Robbie Bell said the language would be changed to say misled. Mr. Stewart made a motion to accept the minutes of the March 31, 2005 with said change. Mr. Miller seconded the motion. The minutes were approved as amended.**

**Investigative Report**

Ms. Denise Moran presented the investigative report to the Council. She stated that two (2) complaints had been closed, one (1) new complaint in the month of June and there were three (3) open complaints at this point and time.

Dr. Levy stated that complaints were not being worked in a timely manor. He stated that we were not helping the public as we should and that some complaints were being staled. He also stated that if a complaint is against a Board or Council member it does not take as long to be worked.

Ms. Moran assured the Council that all complaints were being worked in a timely maner, no matter who the complaint was against.

Ms. Moran then informed the Council that there were no disciplinary actions at this time.

**Examinations**

The Council presented a new version of the Practical Skills examinations to be given at this meeting. Ms. Ferrell asked who drafted the exams and Dr. Levy stated that the Association drafted them. Ms. Ferrell asked Dr. Levy if we had a contract with the Association and Dr. Levy stated that one of our previous attorneys told them it was not necessary. Both Ms. Ferrell and Ms. Armstrong stated that a contract was required if the exams were to be drafted by a vendor instead of the Council. Ms. Robbie Bell told the Council that they could use the newly drafted examinations. Dr. Bowers made a motion to accept the new practical skills examinations as written. Mr. Miller seconded the motion and the motion carried.

Ms. Robbie Bell stated that the Administrative Department would no longer release exams to the public unless court ordered. She then advised the Council not to bring any more revised Practical Skills Exams for approval.

Dr. Levy requested Ms. Ferrell sunshine a new jurisprudence exam for the next meeting.

The Council recessed to proctor examinations at 11:15am and have lunch.

The Council reconvened at 1:15pm

Ms. Ferrell issued Mr. Alderman a I.D. card and Ms. Marva Swann escorted him to have his picture taken.

**Correspondence**

There was a letter to Ms. Julie Carter regarding reinstatement of her failed to renew license drafted by Ms. Armstrong. The Council had requested Ms. Armstrong to draft this letter at the October 28, 2004 meeting. The letter was just for the Council's information.

**Ratification**

Dr. Bowers made a motion to approve licensure to the following applicants due to passage of all examinations:

Jerry E. Mantooth  
John T. Olive  
John B. Williams

Mr. Miller seconded the motion and the motion carried.

Ms. Ferrell informed the Council of the dates that were available for their 2006 Council meetings.

Thursday, March 9, 2006 and Friday, March 10, 2006  
Thursday, June 15, 2006 and Friday, June 16, 2006  
Thursday, October 5, 2006 and October 6, 2006  
Thursday, January 4, 2007 and January 5, 2007

Dr. Levy requested that Ms. Ferrell cancel the Friday meetings due to the fact that Dr. Bowers schedules his surgery on Fridays. He also stated that Mr. Stewart needed the meetings scheduled on the second or fourth Thursdays of the month. He also requested that Ms. Ferrell schedule the meetings for Contested cases on a different Thursday instead of on Friday.

Dr. Levy asked that Ms. Ferrell change the January 5, 2007 meeting to one day in December, 2006. Ms. Ferrell said she would try to schedule it for Thursday, December 14, 2006.

**Adjournment**

There being no further business Mr. Stewart made the motion to adjourn the meeting. The motion was seconded by Dr. Bower and carried. The meeting adjourned at 2:30pm.

**COUNCIL FOR HEARING INSTRUMENT SPECIALISTS**

**MINUTES**

**Date: August 5, 2005**

**Time: 9:00a.m.**

**Location: Cumberland Room, Ground Floor  
Cordell Hull Building  
425 5<sup>th</sup> Ave. North  
Nashville, TN 37247-1010**

**Members Present**

**Dr. David Levy, Chairman  
Dr. Robert E. Bowers, Council Member  
Mr. Jackie L. Miller, Council Member  
Mr. James D. Alderman, Citizen Member**

**Staff Present**

**Ms. Bonnie Ferrell, Administrator  
Ms. Marva Swann, Unit Director  
Ms. Nicole Armstrong, Advisory Attorney  
Ms. Brandi Bozarth, Litigating Attorney  
Ms. Rainey Irwin, Litigating Attorney**

**The Council Chair, Dr. David Levy determined that a sufficient number of Council members were in attendance to constitute a quorum and called the meeting to order at 9:00 am.**

**Conflict of Interest**

**Ms. Nicole Armstrong reviewed the Conflict of Interest with the Council and touched base on the new travel rules.**

### **Contested Cases**

**Judge Marion Wall went over all aspects of the legal process of dealing with contested cases with the Council.**

**Ms. Raney Irwin informed the Council that the cases against Craig Haltom and John Evans were continued.**

**Ms. Irwin stated that the case against Mr. Gene Turpin would proceed under default.**

**Ms. Irwin presented the Council with the allegation of facts, guilty of violating the Tennessee Statutes, T.C.A. § 63-17-205(a), engage in the sale of or practice of fitting or in any way advertise or hold out to be a hearing instrument specialist unless such person holds a current, unsuspended, unrevoked license issued by the Council. Rule 1370-2-.02(4) – Scope of practice. Rule 1370-2-.03 - Necessity of licensure. She also presented the Council with Causes of Action, and Civil Penalty Assessment. She then called the witness for the state, Mr. Kent Layne on the speaker phone for a teleconference.**

**After Mr. Layne was sworn in by Judge Walls the questioning began.**

**Ms. Irwin:**

**Mr. Layne, did you buy a hearing aid from Mr. Turpin?**

**Mr. Layne:**

**I bought a hearing aid from Mr. Turpin.**

**Ms. Irwin:**

**Who was the hearing aid for?**

**Mr. Layne:**

**My wife.**

**Ms. Irwin:**

**Where were you when you purchased the hearing aid?**

**Mr. Layne:**

**In the Sam's Club parking lot, Chattanooga, TN.**



**Ms. Irwin:**

**How did you here about Mr. Turpin and his hearing aids?**

**Mr. Layne:**

**He advertised in our paper.**

**Dr. David Levy:**

**Did Mr. Turpin do any testing, fitting or ear impressions on your wife?**

**Mr. Layne:**

**No, nothing was done except I gave him two hundred fifty dollars and he gave me the hearing aid. The hearing aid only worked for about a week and I returned it to Mr. Turpin. He had it repaired and returned it to me but it only worked for another week or two. I had to go to another dealer and buy a more expensive hearing aid.**

**Mr. Jackie Miller:**

**Did Mr. Turpin give you a receipt, bill of sale, purchase order or Contract?**

**Mr. Layne:**

**No, he did not.**

**Ms. Irwin:**

**Did Mr. Turpin return your two hundred and fifty dollars?**

**Mr. Layne:**

**No, he did not.**

**Ms. Irwin:**

**Thank you Mr. Layne, no further questions.**

**Closing Argument**

**Ms. Irwin: Mr. Turpin is licensed in other states and is well aware of the requirements of the state of Tennessee. He has been selling hearing aids in Tennessee since 2002 and has no intension of quitting. Unsuspecting people of Tennessee think this is OK, they think they are buying a good hearing aid when in fact they are getting a defective product and no fitting or hearing test. Mr. Turpin is operating an unlicensed business and I am concerned with that. This is going against our Statues and Practice Act. I recommend that Mr. Turpin be assessed a civil penalty of \$1,000.00 dollars a month for each of the 28 months he has been practicing in Tennessee, for a total of \$28,000.00 dollars plus court costs.**

After much deliberation by the Council, a motion was made by Dr. Robert Bowers and seconded by Mr. Miller to approve the civil penalty of \$28,000.00 plus court costs. The motion carried.

**Dr. Levy :**

**Policy Statement – Violation of T.C.A. § 63-17-205.** The Council takes this action for the public good. We are charged to protect the public, hopefully this will defer an ongoing situation.

The Council recessed at 11:25 am.

The Council reconvened at 11:40am. Contested case: Ms. Carol Black

Ms. Brandi Bozarth present the allegations of fact, causes of action and civil penalty assessment to the Council.

Ms. Black was not represented by counsel.

**Ms Bozarth:**

Would you please tell the Council the circumstances regarding this case?

**Ms. Black:**

My close friend, Ms Ann Lacey asked me to go to Ms. Carol Archer's home and test her for a hearing aid. Ms. Archer is a close friend of Ms. Lacey. I agreed to go and Ms. Lacey and myself went to Ms. Archer's Home around 10:00am on March 17, 2004. Ms. Archer was upset when we arrived, stating she had a leak in her roof and the repair men did not show up to fix it as scheduled. I proceeded to test Ms. Archer's hearing and took an ear impression. At this time Ms. Lacey explained to Ms. Archer that she could return the hearing aid if she was not satisfied and she would receive a refund less the testing fee. I also discussed everything with Ms. Archer while the molds were setting. I filled out a purchase order and at that time someone knocked on the door, it was the roof repair men. Ms. Archer returned and stated she could not continue at this time, that she had to have her roof fixed. I removed the ear mold and Ms. Lacey and myself left, forgetting to have Ms. Archer sign the purchase order. When I delivered the hearing aids to Ms. Archer at her home I did not have the purchase order with me. I had forgotten that she had not signed it. Ms. Archer returned the hearing aids before the expiration of thirty days for credit and sent me \$25.00. The regular fee testing and return fee is \$240.00 dollars but I only charged her \$120.00 dollars because she was a friend of Ms. Lacey.

I sent Ms. Archer another statement on June 14, 2004, for a balance of \$95.00 Dollars plus a \$4.75 late fee making the balance 99.75. Ms Archer paid \$95.00 dollars on June 14, 2004. I have refunded all the money that Ms. Archer paid me.

**Ms. Archer, Client:**

Ms. Black and Ms. Ann Lacey came to my home to test me for hearing aids. While they were there the repair men came to fix my roof. I told Ms. Black that I had stop and take care of my roof. Ms. Black and Ms. Lacey packed up their equipment and left. Ms. Black never explained anything to me about a return policy. I thought that if I was not satisfied with the hearing aids I could return them for a full refund. I had not signed a contract. After I returned the hearing aids, Ms. Black sent me a bill for \$120.00. I mailed her a check for \$25.00 dollars to compensate her for what she had done.

**Ms. Ann Lacey, witness for the respondent:**

I asked Ms. Black to go to Ms. Archer's home and test and fit her for hearing aids. Ms. Black agreed and I accompanied her. I also explained the return policy to Ms. Archer. Ms. Black tested and took an ear mold of Ms. Archer. When the repair men arrived Ms. Archer asked us to leave, so we did. I did not see a purchase agreement because I sat in the den while Ms. Black done the testing.

**Ms. Alice Ford, Investigator for the state:**

I talked to Ms. Black in December, regarding the bill of sale and she stated it was not signed. She said she forgot to take it with her when she delivered the hearing aids. I also talked to Ms. Lacey by phone prior to talking to Ms. Black who stated that there was no bill of sale signed.

**Dr. William Alderman:**

I find this incident to be a mistake on Ms. Black's part. I do not think this is a general rule.

**Mr. Miller:**

I think Ms. Black was rushed and Ms. Archer misunderstood her when she explained the return policy. Ms. Black is still responsible for not having Ms. Archer sign a purchase order.

**Dr. Bowers:**

I agree, there was no intent, it was a straight forward mistake.

**Motion was made by Mr. Miller and seconded by Dr. Bowers to accept all allegations of fact as presented by the state. Motion carried.**

**Motion was made by Mr. Miller and seconded by Dr. Bowers to adopt all causes of action with the exception of unethical conduct. Motion carried.**

**Motion was made by Dr. Bowers to assess a civil penalty of \$500.00 dollars and seconded by Mr. Miller. The motion carried.**

**Mr. Miller**

**Policy Statement – This was a mistake not done with intent. We hope the civil penalty of \$500.00 dollars will cause the defendant and others to be more careful .**

**Adjournment**

**Being no further business Mr. Miller made the motion to adjourn the meeting. The motion was seconded by Dr. Bower and carried. The meeting adjourned at 2:55pm.**

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**Dr. David Levy, Council Chair**

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**Date**